

Cabinet Members for Prosperity and Environmental Services

Agenda

Date: Monday 1st August 2011
Time: 10.00 am
Venue: Committee Suite 1, Westfields, Middlewich Road
Sandbach CW11 1HZ

1. **Apologies for Absence**

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any personal and/or prejudicial interests in any item on the agenda.

3. **Public Speaking Time/Open Session**

In accordance with Procedure Rules Nos.11 and 35 a period of 10 minutes is allocated for members of the public to address the meeting on any matter relevant to the work of the meeting. Individual members of the public may speak for up to 5 minutes but the Chairman or person presiding will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers. Members of the public are not required to give notice to use this facility. However, as a matter of courtesy, a period of 24 hours' notice is encouraged.

Members of the public wishing to ask a question at the meeting should provide at least three clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given.

For requests for further information

Contact: Paul Mountford
Tel: 01270 686472
E-Mail: paul.mountford@cheshireeast.gov.uk

MATTERS TO BE DECIDED BY THE CABINET MEMBER FOR PROSPERITY

4. Appropriation of Land at the Council Offices Site Remenham, Wilmslow for Car Parking Purposes. (Pages 1 - 6)

To consider a report seeking authority for publication of a notice of intention to appropriate land at the Council Offices site at Remenham, Wilmslow for parking purposes and, subject to the receipt of objections in response to the notice, to appropriate the land accordingly

MATTERS TO BE DECIDED BY THE CABINET MEMBER FOR ENVIRONMENTAL SERVICES

5. Proposed Off-Street Parking Places Order - Remenham Car Park, Chapel Lane, Wilmslow. (Pages 7 - 14)

To consider a report proposing the amendment of the Macclesfield Borough Council (Off Street Parking Places)(Civil Enforcement and Consolidation) Order 2008 ('the Order') the effect of which will be to introduce control and charging to the car park to be known as the Remenham Car Park, Chapel Lane, Wilmslow

MATTERS TO BE DECIDED BY THE CABINET MEMBER FOR PROSPERITY

6. Exclusion of the Press and Public

The reports relating to the remaining items on the agenda have been withheld from public circulation and deposit pursuant to Section 100(B)(2) of the Local Government Act 1972 on the grounds that the matters may be determined with the press and public excluded.

The Committee may decide that the press and public be excluded from the meeting during consideration of the following items pursuant to Section 100(A)4 of the Local Government Act 1972 on the grounds that they involve the likely disclosure of exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 and public interest would not be served in publishing the information.

PART 2 - MATTERS TO BE CONSIDERED WITHOUT THE PUBLIC AND PRESS PRESENT

7. Statutory School Land Transfers and Transfers of Land on the Macclesfield Learning Zone (including Academy Transfer) (Pages 15 - 26)

To consider a report which seeks approval to a number of land transactions on the Macclesfield Learning Zone

8. **Disposal of land at Town Hall / Churchside Cottages, Macclesfield**
(Pages 27 - 32)

To consider a report on the disposal of land at Town Hall, Macclesfield

9. **Disposal of Land Adjacent to 8 Tanglewood Drive, Tytherington** (Pages 33 - 38)

To consider a request for the purchase of a strip of land adjacent to 8 Tanglewood Drive, Tytherington

10. **Proposed Lease of Malkins Bank Golf Course, Sandbach** (Pages 39 - 44)

To consider a report on the process undertaken by the Council in order to select a tenant for Malkins Bank Golf Course

11. **Monks Coppenhall Children's Centre, The Brooks Children's Centre and Oak Tree Children's Centre - Nursery Leases** (Pages 45 - 56)

To consider a report that seeks approval for the granting of leases in respect of the three children's daycare nurseries

12. **Acquisition of Land and Rights Over Land Adjacent to Middlewich Road Crewe, from Two Third Party Land Owners, to Facilitate the Construction of Connect 2 Greenway** (Pages 57 - 62)

To consider a report on the proposed acquisition of land and rights to facilitate the construction of a new cycle path and footway, Connect 2 Greenway

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CHESHIRE EAST COUNCIL

CABINET MEMBER FOR PROSPERITY

Date of Meeting:	1 August 2011
Report of:	Head of Safer Stronger Communities Assets Manager
Subject/Title:	Appropriation of Land at the Council Offices Site Remenham, Wilmslow for Car Parking Purposes.

1.0 Report Summary

- 1.1 The purpose of the report is to seek authority for publication of a notice of intention to appropriate land at the Council Offices site at, Remenham Wilmslow for parking purposes and, subject to the receipt of objections in response to the notice, to appropriate the land accordingly.

2.0 Recommendations

- 2.1 The Cabinet Member for Prosperity is requested:

- 2.1.1 to authorise the Borough Solicitor, or officer acting on her behalf, to publish a notice of intention to appropriate land known at the Council Offices site at, Remenham, Wilmslow, shown edged in red on the plan at Appendix A, for the purposes of section 32 of the Road Traffic Regulation Act 1984 ('the 1984 Act), i.e. parking purposes; and
- 2.1.2 in the event that no objections to the proposed appropriation are received within the consultation period (or if received they are withdrawn), on the day immediately following the last date for receipt of objections specified in the public notice, to appropriate the land at the Council Offices site, Remenham, Wilmslow, shown edged in red on the plan at Appendix A for the purposes of section 32 of the 1984 Act (i.e. parking purposes); and
- 2.1.3 to note that, if objections to the proposed appropriation are received, that the objections will be referred to a subsequent meeting of the Cabinet Member for consideration.

3.0 Reasons for Recommendations

- 3.1 As set out within the legal implications at paragraph 8 below, it is necessary to formally appropriate land for parking purposes in order to make an off-street parking places order under the provisions of the Road Traffic Regulation Act 1984.

- 3.2 The proposal will enable the Council to control parking through civil enforcement which should help to ensure that the site is not misused, to increase available public off street parking in this part of Wilmslow, and to secure an income for the Council from this asset.

4.0 Wards Affected

- 4.1 Wilmslow West & Chorley

5.0 Local Ward Members

- 5.1 Councillor Gary Barton and Councillor Wesley Fitzgerald

**6.0 Policy Implications including - Climate change
- Health**

- 6.1 Not applicable.

7.0 Financial Implications 2011/12 and beyond (Authorised by the Borough Treasurer)

- 7.1 The estimated costs for the statutory notices, in the region of £400, will be met from existing Parking Services' budget. The appropriation of the land at Remenham has no other financial implications; however the commissioning of the car park itself will. If this site is to be ultimately disposed of by the Council, there may be consequent costs of revoking this appropriation and of any then existing Car Park Order.

- 7.2 Should the Appropriation be agreed, the proposal for approval of an Off Street Parking Places Order, which will enable the Council to make a charge for parking, will proceed subject to objections received. Capital set up costs of this proposal are estimated at £42000 with annual operating costs of £2800. At the proposed prices and estimated occupancy of 50%, income is forecast at a maximum of £27,100 per annum. The car park would need to be operational for a minimum of 19 months to recoup the initial set up costs.

- 7.3 The introduction of charging should safeguard income on other car parks of c. £50,000.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 Section 35 of the Road Traffic Regulation Act 1984 ('the 1984 Act') provides that a local authority may make an off-street parking places order in respect of any parking place provided by it under section 32 of the 1984 Act or provided under letting arrangements. Section 32(2) of the 1984 Act provides that a local authority may adapt for use a parking place any land acquired or appropriated by them for the purposes of this section.

- 8.2 Appropriation of land for any purpose is governed by Section 122 of the Local Government Act 1972 (the 1972 Act), which authorises councils to appropriate land to any purpose for which they are authorised to acquire land by agreement

and which is no longer required for the purpose for which it was held immediately prior to the appropriation.

- 8.3 It should be noted that the appropriation of land by a council by virtue of sub-section 122(1) of the 1972 Act remains subject to the rights of other persons in, over, or in respect of the land concerned. Therefore a decision to appropriate land for a particular purpose does not extinguish any third party rights over the land in question.
- 8.4 Sub-section 122(2A) of the 1972 Act provides that a council may not appropriate any land consisting of or forming a part of open space without first providing public notice for two consecutive weeks in a local newspaper and thereafter considering any objections received. Taking a wide definition of 'open space', the land in question may be viewed as open space for the purposes of section 122, and for this reason it is considered advisable to give public notice of the intention to appropriate.
- 8.5 The decision about whether land is no longer required for a particular purpose is one for the local authority acting in good faith. However if the land is open space the Council is required by Section 122(2A) to consider any objections to the Council's view on the question of whether the land is required for its present purposes and not just the issue of whether the land not required should be appropriated to a new purpose. If any objections are received (and not withdrawn), then these must be considered by the decision maker. It is acceptable to make a decision regarding the intention to appropriate in the absence of objections, but this should not be treated as foreclosing any further consideration of the matter if objections are received.

9.0 Risk Management

- 9.1 Full consideration of any objections received in response to the statutory notices will mitigate any risk of challenge.

10.0 Background and Options

- 10.1 The land shown edged red on the plan attached as Appendix A is land at the Council Offices site, Remenham Wilmslow. The whole plot of land was acquired by Cheshire County Council, dated 10th December 1948. This includes the adjoining land the Health Centre is built upon as well. There does not appear to be any restrictions on use of the land contained in this Conveyance. Whilst it is understood that this area of land has been used as a Council staff and visitor car park for a number of years, there does not appear to be any evidence within the Council's records to indicate that this area of land has ever been appropriated for parking purposes. This is why it is necessary to appropriate the land; the procedural requirements in relation to appropriation are set out within paragraph 8.0 above.
- 10.3 Land which forms a parking place must be acquired or appropriated for parking purposes in order to enable the authority to make an off-street parking places order controlling the use of the car park under section 35 of the Road Traffic

Regulation Act 1984 ('the 1984 Act'). It should be noted that any proposals in relation to the making of an off-street parking places order in relation to the site under section 35 of the 1984 Act will be subject of a separate decision and subject to statutory consultation.

- 10.4 The Cabinet Member is therefore requested to authorise notice to be provided of the intention to appropriate the land to parking purposes. If no objections are received within the period specified in the notice (or if any such objections received are withdrawn) the land would be appropriated with effect from the day after the last date for objections specified in the notice. If objections are received, the matter will be referred back to the Cabinet Member for consideration of the objections.
- 10.5 The alternative option is not to approve the publication of the statutory notices; this would mean that the benefits set out within paragraph 3.2 above could not be achieved.
- 10.6 Existing parking arrangements for those Council (and other) staff currently occupying the Council offices will need to be managed within the parameters of the proposed controls.
- 10.7 It is important to stress that the proposed appropriation will not compromise the Council's wider long term ambitions for the site, which potentially include its disposal on the open market.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

Name: Paul Burns
Designation: Parking Services Manager
Tel No: 01270 537805
Email: carparks@cheshireeast.gov.uk



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CHESHIRE EAST COUNCIL

Cabinet Member for Environmental Services

Date of Meeting: 1 August 2011
Report of: Head of Safer and Stronger Communities
Subject/Title: Proposed Off-Street Parking Places Order – Remenham Car Park, Chapel Lane, Wilmslow.

1.0 Report Summary

1.1 This report proposes the amendment of the Macclesfield Borough Council (Off Street Parking Places)(Civil Enforcement and Consolidation) Order 2008 ('the Order') the effect of which will be to introduce control and charging to the car park to be known as the Remenham Car Park, Chapel Lane, Wilmslow, shown edged red on the plan attached at Appendix A, ("the Land").

2.0 Recommendation

2.1 The Cabinet Member for Environmental Services is requested:

2.1.1 subject to (a) statutory consultation; (b) the appropriation of the Land for parking purposes; and (c) the grant of any planning consent required, to approve a proposed amendment to the Order, the effect of which would be to make provision for control and charging for parking on the Land as follows:

(a) that the charges payable in connection with the use of the Parking Place (Monday to Saturday between the hours of 8.00 am and 6.00 pm) would be:

up to 1hr	up to 2 hrs	up to 3 hrs	up to 5 hrs	up to 6 hrs	up to 10hrs
£ 0.50	£ 1.00	£ 1.70	£ 2.50	£ 3.10	£ 3.30

(b) that the hours of operation of the Parking Place would be all days and all hours;

(c) that the Parking Place may be used by the following classes of vehicles:
 (i) motor cars (within the provisions of section 136(2) of the Road Traffic Regulation Act 1984 ('the 1984 Act')); (ii) motor cycles (as defined by section 136(4) of the 1984 Act); (iii) other motor vehicles (of a gross weight not exceeding 3.5 tonnes); (iv) invalid carriages (as defined by section 136(5) of the 1984 Act).

2.1.2 to authorise the Borough Solicitor, or officer acting on her behalf, to publish a notice of proposals in relation to the proposed amendment order, with any objections to be made within the statutory consultation period of twenty-one days. In the event that objections are received, for these to be referred back to the Cabinet Member for consideration at a future meeting.

2.1.3 in the event that no objections to the proposed amendment order are received, and subject to: (i) the appropriation of the Land for parking purposes; and (ii) the grant of a relevant planning consent (if required), to authorise the Borough Solicitor, or officer acting on her behalf, to make and bring into force the proposed amendment order (as set out in 2.1.1 above) and to give notice thereof in accordance with statutory requirements.

3.0 Reasons for Recommendations

3.1 The proposal to introduce at this site charging for parking and control through civil enforcement should help to ensure that the site is not misused, to increase available public off street parking in this part of Wilmslow, and to secure an income for the Council from this asset.

3.2 When the site is vacated, there is a distinct risk that current customers of public car parks in the town centre, will seek to transfer to Remenham to avoid paying charges. The site could accommodate a minimum of 57 vehicles which, if parking all day, represent lost income from other car parks of at least £50,000 per annum.

3.3 The charges proposed are those presently in place at Broadway Meadow Car Park to the north of the town centre and are proposed for consistency.

4.0 Wards Affected

4.1 Wilmslow West & Chorley

5.0 Local Ward Members

5.1 Councillor Gary Barton and Councillor Wesley Fitzgerald.

6.0 Policy Implications including - Climate change, Health

6.1 This proposal should not lead any significant effect on climate change or Health and Safety.

7.0 Financial Implications 2011/12 and beyond (Authorised by the Borough Treasurer)

7.1 There will be a cost implication relating to the publication of the statutory notices. The estimated publicity costs for the statutory notices, in the region of £1,000, will be met from existing budget provision within Parking Services. The commissioning of car park itself will have further financial

implications (details of which are provided within paragraph 7.2 below). If this site is to be ultimately disposed of by the Council, there may be consequent costs of revoking any existing off-street parking places order.

- 7.2 Subject to the appropriation of the land for parking purposes and subject to any consultation responses received, the proposal for approval of an Off Street Parking Places Order, would enable the Council to make a charge for parking. The capital set up costs of this proposal are estimated at £42,000 with annual operating costs of £2,800. At the proposed prices and estimated occupancy of 50%, income is forecast at a maximum of £27,000 per annum. The car park would need to be operational for a minimum of 19 months to recoup the initial set up costs.
- 7.3 The introduction of charging should safeguard income on other car parks of c. £50,000 as explained above (3.2).

8.0 Legal Implications (Authorised by the Borough Solicitor)

8.1 Section 122 Duty

Section 122 of the Road Traffic Regulation Act 1984 ('the Act') imposes a general duty on the local authority to have regard to certain factors when exercising its functions under the Act, including car parking order making. Section 122 states the following;

- 8.1.1 *'It shall be the duty of every local authority upon whom functions are conferred by or under this Act, so to exercise the functions conferred on them by this Act as (so far as practicable having regard to the matters specified in subsection (2) below) to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway.'*

- 8.1.2 The matters specified under s122(2) are as follows:

(a) the desirability of securing and maintaining reasonable access to premises;

(b) the effect on the amenities of any locality affected and (without prejudice to the generality of this paragraph) the importance of regulating and restricting the use of roads by heavy commercial vehicles, so as to preserve or improve the amenities of the areas through which the roads run;

(c) the strategy prepared under section 80 of the Environment Act 1995 (national air quality strategy);

(d) the importance of facilitating the passage of public service vehicles and of securing the safety and convenience of persons using or desiring to use such vehicles; and

(e) any other matters appearing to the local authority to be relevant.'

8.1.3 It is considered that the change proposed in this report contribute to the fulfilment of section 122 duties through introduction of effective controls and facilities on this site.

8.2 The proposals suggested with the report require the proposing and making of an amendment order to amend the Order, the procedure for which is as set out in the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996.

8.3 The Regulations prescribe that before making an order a local authority must publish a 'notice of proposals' in a newspaper circulating in the area in which any road or other place to which the order relates is situated and to place documents relating to the proposals on deposit for inspection by members of the public. The local authority is also required to consult with certain prescribed bodies, including the Chief Officer of Police, and is required to take into consideration any objections received within the 21 day consultation period. Failure to consider any such objections would pose a risk to any subsequent decision. If any objections are received then these will be reported to the Cabinet Member for consideration.

8.4 Public inquiry

8.4.1 When considering whether to make an order under the Act, the decision-maker will be aware of the discretion he has to hold a public inquiry. Factors which ought to be taken into account in deciding whether or not an inquiry should be held are:

- the complexity of the proposals;
- the nature of the objections received;
- whether the decision maker is able to take into account competing arguments and weigh them against each other.

8.4.2 The discretion as to whether to hold a public inquiry or not should be exercised according to the rules of natural justice, i.e. fairly in all the circumstances. Any decision is not to be based on any self-imposed rule of policy or practice and therefore the decision must be made in relation to the present circumstances. It must not be based upon any previous presence or absence of any inquiry in similar proposals, nor must it be based upon a fear of setting a precedent.

8.5 Making an order

8.5.1 As soon as practicable after an order is made the Council is required to place a copy of the order with the documents on deposit at the Council's offices and, within fourteen days of making the order, publish a 'notice of making;' inform any person who has objected to the order of the order being made; and ensure adequate publicity is given to the making of the order. A six week high court challenge period will then follow from the date the order was made.

8.6 Title to the Land

8.6.1 The Land was acquired by Cheshire County Council by way of conveyance dated 10th December 1948. There do not appear to be any restrictions on use of the Land contained in this Conveyance. The Land was formerly part of a larger site which included the neighbouring Health Centre and ancillary open land. By a deed dated 10th December 1981 the Health Centre land was vested in the Secretary of State for Social Services. In that deed both parties mutually agreed and confirmed that all rights to light or air way water drainage support and other easements which had until then been used or enjoyed by the Health Centre land over the land retained by the Council and vice versa could continue to be used or enjoyed in the manner in which they have been used or enjoyed until the date of the deed.

8.7 Planning permission

8.7.1 Advice has been received from the Local Planning Authority indicating that the proposals would constitute a material change of use of the land for planning purposes (i.e. change of use from ancillary car parking to a public pay and display car park) and that planning permission would be required as a result. For this reason the decisions requested within 2.1.1 and 2.1.3 above are subject to the grant of any required planning consent.

9.0 Risk Management

9.1 Full consideration of any objections received in response to the statutory notices will mitigate any risk of challenge.

10.0 Background and Options

10.1 Land which forms a parking place must be acquired or appropriated for parking purposes in order to enable the authority to make an off-street parking places order controlling the use of the car park under section 35 of the Road Traffic Regulation Act 1984 ('the 1984 Act'). There is no evidence within the Council's records to indicate that the Land has been appropriated for parking purposes. For this reason, the decisions at paragraphs 2.1 and 2.1.3 are subject to the appropriation of the land for parking purposes. The decision in relation to appropriation is subject of a separate report to the Cabinet Member for Prosperity and the decisions with this report are strictly without prejudice to the decisions in relation to appropriation.

10.2 The reasons for the proposed amendment order are set out within paragraph 3.0 above.

10.3 The alternative options are:

10.3.1 To adopt the car park but not to charge for use; this would lead to the car park never covering its costs of set up or operation.

10.3.2 Not to adopt the site as a car park; the risks of this are outlined above unless the site is disposed of immediately or put to other use. This is not felt to be likely in the short to medium term.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

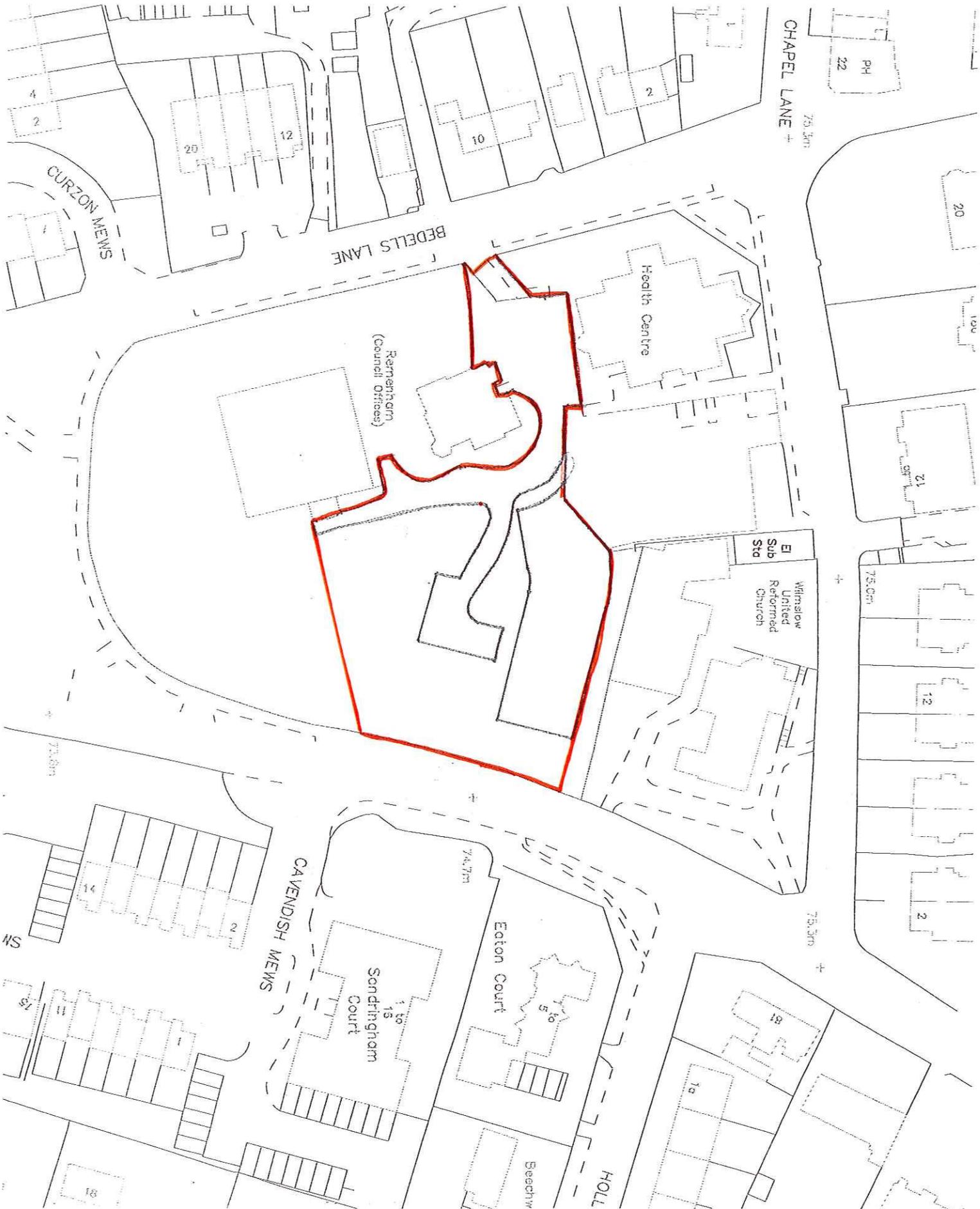
Macclesfield Borough Council (Off Street Parking Places)(Civil Enforcement and Consolidation) Order 2008

Name: Paul Burns

Designation: Parking Services Manager

Tel No: (01270) 537805

Email: carparks@cheshireeast.gov.uk



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